

VISHAV RANA (MIGRATION) [2025] ARTA 928 (8 APRIL 2025)

Decision and

Reasons for Decision

1.

Applicant:	Mr Vishav Rana
Respondent:	Minister for Immigration and Multicultural Affairs
Tribunal Number:	2320208
Tribunal:	General Member F Russo
Place:	Sydney
Date:	8 April 2025
Decision:	The Tribunal sets aside the decision under review and remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa: • Public Interest Criterion 4020 for the purposes of cl 500.217 of Schedule 2 to the Regulations

Statement made on 8 April 2025 at 5:15pm

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – Federal Circuit and Family Court remittal – bogus document or false information in relation to previous student visa application – university results – departmental investigations found discrepancy between mark sheet and actual result – supporting documentation and tribunal's investigations – verification by university and online result consistent with claimed mark – decision under review remitted

LEGISLATION

*Migration Act 1958 (Cth), ss 5(1), 65, 359A, 376(1)(a), (2)
Migration Regulations 1994 (Cth), Schedule 4, criterion 4020(1), (5), Schedule 2, cl 500.217(1)*

CASES

*Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274*

Sun v MIBP [2015] FCCA 2479
Trivedi v MIBP [2014] FCAFC 42

Statement of Reasons

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister on 30 November 2021 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
3. The applicant applied for the visa on 26 April 2021. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.217 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because the delegate considered the applicant had provided, or caused to be provided, a bogus document or false or misleading information in relation to the applicant's previous Student visa application. The document in question was the applicant's results in the Bachelor of Commerce (Professional) Part III (Semester VI) from Punjabi University, Patiala, dated 18 December 2017, which stated that the applicant had obtained a score of 34 in Contemporary Accounting. The delegate's reasons for decision state that a Departmental officer had conducted an investigation to confirm if the education document was genuine. The delegate's reasons state that the Departmental officer found that there was a discrepancy between the claimed score of 34 in Contemporary Accounting and the actual score the applicant had received in this unit.
4. The delegate's reasons for decision record that on 28 July 2021, the Department gave the applicant an opportunity to comment on information about the suspected bogus document. The delegate's reasons state that the applicant did not provide a written response, but note that on 3 August 2021 and 31 August 2021, the applicant provided the Department with certified copies of mark sheets issued by Punjabi University, as well as evidence of the award of the Bachelor of Commerce (Professional) and letters from Punjabi University and an affiliated college. The delegate placed greater weight on the information obtained during the Department's investigations and found the information provided by the applicant in August 2021 did not allay concerns raised by the information obtained in the investigations. The delegate found that the education certificate which the applicant provided in support of his previous Student visa application is a bogus document. As a result, the delegate found the applicant did not meet Public Interest Criterion (PIC) 4020(1).
5. The applicant lodged an application for review of the delegate's decision with the former Administrative Appeals Tribunal (the AAT) on 14 December 2021.
6. On 1 November 2022, the applicant appeared before the AAT (differently constituted) to give evidence and present arguments. At the conclusion of the hearing, the AAT gave its decision and affirmed the decision of the delegate.
7. The applicant made an application for review to the Federal Circuit and Family Court of Australia (the Court), and on 1 December 2023 the Court ordered by consent that the decision of the AAT dated 1 November 2022 be quashed and remitted to the AAT to determine according to law, on the basis that the AAT's decision was affected by jurisdictional error because the AAT (differently constituted) had failed to undertake its own independent assessment as to whether the applicant had provided a bogus document, and had instead relied upon the conclusion for by the delegate that the document in question was bogus.
8. The matter was remitted to the AAT by order of the Court.
9. On 14 October 2024, the AAT became the Administrative Review Tribunal (the Tribunal).

10. Under the transitional provisions in the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) (the Transitional Act), applications for review to the AAT that were not finalised before 14 October 2024 are taken to be an application for review to the Tribunal. The Transitional Act gives the Tribunal the authority to continue and finalise any aspect of the review not already completed by the AAT. This decision and statement of reasons is made by the Tribunal.
11. The applicant appeared before the Tribunal on 3 April 2025 to give evidence and present arguments.
12. The applicant was represented in relation to the review. The representative attended the Tribunal hearing.
13. For the following reasons, the Tribunal has concluded that the decision under review is set aside and the matter be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

14. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.217 for the grant of the visa. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).
15. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate circumstances justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in a material particular?

16. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a

document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.

17. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
18. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.
19. The phrase 'bogus document' for the purpose of cl 4020(1) is defined in s 5(1) of the Act, which provides the meaning to be a document that the Minister reasonably suspects is a document that: (a) purports to have been, but was not, issued in respect of the person; or (b) is counterfeit or has been altered by a person who does not have authority to do so; or (c) was obtained because of a false or misleading statement, whether or not made knowingly.
20. When s 5(1) is considered in conjunction with cl 4020(1), the criterion requires that there is no evidence before the Minister (or Tribunal) that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth a document that the Minister reasonably suspects is a document that was obtained (a) purports to have been, but was not, issued in respect of the person; or (b) is counterfeit or has been altered by a person who does not have authority to do so; or (c) was obtained because of a false or misleading statement, whether or not made knowingly.
21. To meet the definition of 'bogus document', there need only be a 'reasonable suspicion' of a document being bogus, not probative evidence. In *Sun v MIBP* [2015] FCCA 2479 at [45] the Court stated that the primary issue in terms of a person's authority to alter documents under paragraph (b) of the definition of 'bogus document' is whether the decision-maker reasonably suspects there was a lack of authority, not whether that authority was lacking as a matter of fact. It flows from this that the relevant test is whether the Tribunal reasonably suspects the document is a document that falls within one of the three reasons as set out above, not whether one or more of the three reasons is satisfied as a matter of fact.
22. The applicant lodged the application for the Student visa under review with the Department on 26 April 2021. According to the delegate's reasons for decision, as the applicant held a Student visa in the 12-month period before the Student visa application was made, the delegate took into consideration information which the applicant provided to the Department in relation to his previous Student visa application, pursuant to cl 500.217(1) of the Regulations and PIC 4020(1)(b).
23. The delegate's reasons for decision indicate that with his previous Student visa application, the applicant had provided an education document from Punjabi University, Patiala, dated 18 December 2017, for the Bachelor of Commerce (Professional) Part III (Semester VI). The

delegate's reasons state that in this document, the applicant obtained a score of 34 for Contemporary Accounting.

24. The delegate's reasons state that an investigation was conducted by a Departmental officer to confirm whether the education document was genuine. The delegate's reasons state that during the investigations, the Department received unfavourable information which indicated discrepancies between the claimed education score and the genuine score obtained by the applicant, raising concerns that the applicant may have provided the Department with a bogus document.
25. The delegate's reasons for decision note that on 28 July 2021 the Department gave the applicant an opportunity to comment on the Department's concern as to whether he had provided a bogus document. The delegate's reasons for decision state that the applicant did not provide a written response, but nonetheless note the applicant submitted the following documents on 3 August and 31 August 2021:
 - a. Certificate for the award of the Bachelor of Commerce (Professional) from Punjabi University, dated 18 December 2017;
 - b. 'Result-Cum-Detailed-Marks Card' for the Bachelor of Commerce (Professional) issued by Punjabi University, including results for Part III (Semesters V and VI);
 - c. Letters from Shri Guru Teg Bahadur Khalsa College, dated 27 March 2018, confirming the applicant was a bona fide student of the college and the Bachelor of Commerce (Professional) during the session 2016-17, and had passed the course and secured 1615 marks out of 3000 in May 2017 under university Roll No. 20178 and had become eligible for award of the qualification; and
 - d. Letter from Punjabi University, dated 19 August 2021, attaching verified copies of the applicant's examination results in the Bachelor of Commerce and confirming he had been awarded the degree on 18 December 2017.
26. As noted above, the delegate's reasons for decision indicate that the delegate considered the documents he provided to the Department in August 2021 did not allay the concerns raised by the Department's investigations and the delegate placed greater weight on the information obtained during the Department's investigations. The delegate found that the education certificate the applicant had provided in support of his previous Student visa application is a bogus document, and found that the applicant had given, or caused to be given, information that is bogus. Accordingly, the delegate was not satisfied that the applicant meets cl 500.217(1) of the Regulations and PIC 4020.

27. Information regarding the Department's investigations regarding the alleged bogus document

28. The Tribunal notes that details of the applicant's investigations regarding the alleged bogus document were not contained on the Department files for the application, other than the information which was set out in the delegate's reasons for decision and the s 57 natural justice letter which the Department sent to the applicant on 28 July 2021.
29. On 5 March 2025 the Tribunal requested that the Department provide records or evidence of the investigations conducted by the Department in relation to the alleged bogus document. In response, the Department provided three folios which are the subject of a non-disclosure certificate issued by a delegate of the Minister for Home Affairs and Delegate of the

Secretary of the Department on 17 March 2025 under s 376(1)(a) of the Act. The certificate states that the disclosure of the information would be contrary to the public interest because it would compromise investigative methods by disclosing lawful means by which investigations are undertaken into breaches or possible breaches of the law.

30. A preliminary question for the Tribunal is whether the non-disclosure certificate has been validly issued. If the certificate has been validly issued, its effect is to restrict access to the documents and information referred to in the certificate. However, the Tribunal may, if it thinks it appropriate to do so having regard to any advice given by the Secretary under subsection 376(2) of the Act, disclose any matter contained in the documents subject to the non-disclosure certificate, or the information, to the applicant.
31. At the hearing, the Tribunal discussed with the applicant the contents of the non-disclosure certificate and put its preliminary view that the non-disclosure certificate appears to be valid because it has been certified and specifies a valid reason for the issue of the certificate that could form the basis for a claim by the Crown in the right of the Commonwealth in a judicial proceeding. The applicant and his representative were invited to provide comments and submissions on the validity of the certificate. The applicant indicated that he has no comments on the validity of the submission and his representative did not challenge the certificate's validity.
32. The Tribunal has considered the certificate, which contains a public interest reason why the documents subject to the certificate should not be given or disclosed. The Tribunal is satisfied that the certificate is valid.
33. The Tribunal used the procedure set out in s 359A of the Act to put to the applicant the particulars of information from the documents which are the subject of the s 376 certificate, which the Tribunal considered may be adverse to the applicant's claims and the relevant issues under review, and invited the applicant to comment on the information. The Tribunal put the following particulars of information to the applicant from the Department's investigations of the alleged bogus document:
 - a. His case was audited as part of an investigation into fake education certificates issued by Indian education institutions;
 - b. A check of the alleged bogus document concluded that the document was non-genuine as he had failed in the subject Contemporary Accounting and had altered the result from 17 to 34;
 - c. A check of the university's website indicated that he was to 'Re-appear in II' and was eligible to reappear at the university until May 2019; and
 - d. The investigations contain a summary of marks which are stated to have been taken from Punjabi University's website, and which show an 'Ext' score for Contemporary Accounting of 17, not 34, with the remaining scores being identical to those provided by the applicant in the verified copy he provided from the university, other than the results not listing a total score out of 500 for Part III (Semester VI).
34. The applicant indicate that he understood the information. In response, he stated that he provided the Department with a verified copy of his results from Punjabi University, as well as letters from the university, which are all genuine documents. He stated that he did not have an explanation for why the Department investigations found that he obtained a score of 17 instead of 34 for Contemporary Accounting.

35. The applicant gave evidence that he obtained the copy of his university results by hard copy from Punjabi University in 2018 and gave them to an agent in India, who was assisting him with his first Student visa application and uploaded the documents directly to the Department's website. He stated that after the Department raised the issue of whether he had provided a bogus document, his father went to Punjabi University, and he wrote letters to the university. The university sent copies of the verified results and the award of his degree directly to his agent in Australia. The applicant's current migration agent submitted that another agent who works for his agency received the sealed envelope from the university and opened the document in the applicant's presence, following which the documents were scanned and sent to the Department in response to the s 57 invitation.
36. The Tribunal notes that the applicant's evidence regarding how he obtained copies of his marks in the Bachelor of Commerce (Professional) in both 2018 and 2021 is consistent with the evidence he gave to the previously constituted Tribunal at the hearing held on 1 November 2022.

37. Supporting documentary evidence supplied by the applicant to the Department

38. As noted above, in August 2021 the applicant provided the Department with a number of documents in response to the Department's s 57 natural justice letter. These documents include a letter from Punjabi University, signed by the Assistant Registrar (Exams) and dated 19 August 2021, which states that the applicant obtained a score of 1615 out of 3000 for the Bachelor of Commerce and was awarded the degree on 18 December 2017. The letter attaches a verified copies of his academic transcript for the course, which indicate the pages were verified by the Assistant Registrar (Exams) on 13 August 2021. The results for Part III, Semester VI, which are originally dated 18 December 2017, have been signed and verified on 13 August 2021 and record the applicant as having achieved an 'Ext' score of 34 for Contemporary Accounting.
39. Further, the applicant provided two letters from Shri Guru Teg Bahadur Khalsa College, dated 22 March 2018, which indicate that the applicant was a bona fide student of the Bachelor of Commerce (Professional) Part III, Semester VI during 2016-17, completed this course with a score of 1615 out of 3000 and was eligible for award of the degree. The applicant explained at the hearing that this college is affiliated with Punjabi University, which is confirmed by the college's website¹ and I accept is the case.

40. Investigations conducted by the Tribunal

41. The Tribunal notes that the information provided by the Department regarding the investigations conducted by the Departmental officer indicates that the results which the applicant provided for the Bachelor of Commerce (Professional) were compared to results for the applicant which are available on Punjabi University's website.
42. Accordingly, the Tribunal conducted its own search of Punjabi University's website, which currently allows a search of university results as far back as 2016.² The website allows for searches by course and semester with the roll number of the student (in this case, 20178). A search conducted by the Tribunal on 2 April 2025 with the applicant's roll number for the Bachelor of Commerce (Professional) Semester VI, 2017 retrieved a copy of the applicant's results for the semester, showing a score of 34 for Contemporary Accounting 'Ext', which is the same result contained in the academic results which the applicant provided to the Department with his first Student visa application. A copy of the search result is saved to the Tribunal file for the application for review.

¹www.sgbtcollege.org.in, accessed 8 April 2025.

² See <https://results.pupexamination.ac.in/t8/results/results.php>, accessed 2 April 2025.

43. The Tribunal also notes that the results available through Punjabi University's website contain the following disclaimers:
- a. Punjabi University is not responsible for any error in the results being published on the Net;
 - b. The results published on the net are for immediate information only, and for confirmation, the concerned gazette should be consulted;
 - c. The results cannot be treated as original mark sheets; and
 - d. Original mark sheets have been issued by Punjabi University.
44. The applicant indicated at the hearing that he knew nothing about the copy of his results which are available on Punjabi University's website, and he had no further comments in response to the information provided by the Tribunal.

45. *Findings*

46. I have considered the information contained on the Department file regarding the investigation conducted by a Departmental officer in February 2021 as to the genuineness of the academic results the applicant provided for the Bachelor of Commerce (Professional) with his first Student visa application. I note that the information provided by the Department indicates that this investigation was conducted by comparing the academic results submitted by the applicant with those which were found by the Department on Punjabi University's website.
47. There are several reasons why I do not consider it reasonable to suspect that the applicant has given, or caused to be given, a bogus document. Firstly, Punjabi University's website contains the disclaimers which are set out in the reasons above, and which indicate that the results obtained through the website search are for immediate information only and cannot be treated as original mark sheets, and that original mark sheets are issued by the university.
48. Secondly, the applicant has provided a verified copy of his academic results, which has been signed and verified by the Assistant Registrar (Exams) of Punjabi University in August 2021. Given these results have been verified, I give greater weight to them than the record of the Department's investigation, which does not contain a photocopy or printout of the results of the investigation, but rather, contains information which appears to have been cut and pasted into a Departmental document and contains formatting and layout issues, including a number of fields of information which are in a language other than English and have been represented in the Department's document as question marks. Given the disclaimers which are contained on Punjabi University's website, I give greater weight to the verified results provided by the applicant, which are contained on university letterhead and display the university's watermark and are signed and dated by an officer of the university.
49. Thirdly, the Tribunal's search of Punjabi University's website on 2 April 2025 revealed that the 'Ext' result currently recorded for the applicant in Contemporary Accounting is 34, which is consistent with the result recorded in the document he provided to the Department with his first Student visa application. It is unclear whether this result was always recorded as 34 or whether it has been amended by the university since the investigation conducted by the Departmental officer in February 2021. It is not essential for the Tribunal to make a finding either way. However, I note that the search results of the investigation conducted by the Tribunal suggest that the information contained in the document provided by the applicant is genuine.

50. Given these concerns, I give greater weight to the verified copies of the transcripts provided by the applicant over the details of the investigations conducted by the Department, given the Departmental investigation was conducted from a source which is the subject of disclaimers regarding the reliability and purpose of the information. Under the circumstances, the Tribunal cannot reasonably hold a suspicion that the education document provided by the applicant with his first Student visa application is a bogus document as described by s 5(1) of the Act.
51. Therefore, the applicant meets PIC 4020(1).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

52. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).
53. There is no information before the Tribunal which indicates that PIC 4040(2) is not met.
54. Therefore, PIC 4020(2) is met.

Has the applicant satisfied the identity requirements?

55. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity.
56. There is no information before the Tribunal that suggests that the applicant's identity is in question.
57. Therefore, the applicant meets PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

58. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).
59. There is no information before the Tribunal that the applicant or any family unit member has been refused a visa in circumstances as described in PIC 4020(2B).
60. Therefore PIC 4020(2B) is met.
61. On the basis of the above, the applicant does satisfy PIC 4020 for the purposes of cl 500.217.

DECISION

62. The Tribunal sets aside the decision under review and remits the application for a Student (Temporary) (Class TU) visa for reconsideration, in accordance with the order that the applicant meets the following criteria for a Subclass 500 (Student) visa:
- Public Interest Criterion 4020 for the purposes of cl 500.217 of Schedule 2 to the Regulations

Date(s) of hearing: 3 April 2025

Representative for the Applicant: Mr Rakshit Sawhney (MARN: 2318110)

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the ART during the review of a reviewable migration decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...